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BY HAND DELIVERY

Marlene H Dortch, Esquire

Secretary

Federal Communications Commission

445 12th Street, S W , Room TW-B204

Washington, D.C. 20554

Attn: The Honorable Arthur I. Steinberg
Administrative Law Judge

Re: EB Docket No. 03-152

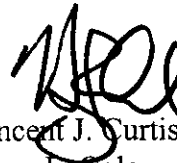
Dear Ms. Dortch:

On behalf of Richard B. Smith, pursuant to Section 1.223 of the Commission's Rules, there is transmitted herewith, an original and six copies of a Consolidated Reply to Oppositions to Petition for Leave to Intervene.

If additional information is necessary, please communicate with this office.

Please date stamp the extra enclosed copy and return it to the undersigned

Very truly yours,



Vincent J. Curtis, Jr.

Harry F. Cole

Susan A. Marshall

Counsel for Richard B. Smith

VJC/st

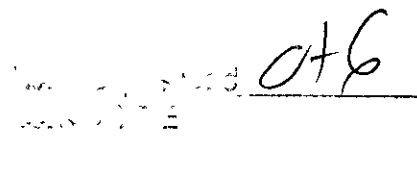
Enclosure

cc: See Certificate of Service

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY



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Before the
FEDERAL COMMUNICATIONS COMMISSION SEP 11 2003
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EB Docket No. 03-152

| | | |
|---|---|------------------------|
| In the Matter of |) | |
| |) | |
| WILLIAM L. ZAWILA |) | Facility ID No. 72672 |
| |) | |
| Permittee of FM Station KNKS, |) | |
| Coalinga, California |) | |
| |) | |
| AVENAL EDUCATIONAL SERVICES, INC. |) | Facility ID No. 3365 |
| |) | |
| Permittee of FM Station KAAX, |) | |
| Avenal, California |) | |
| |) | |
| CENTRAL VALLEY EDUCATIONAL |) | Facility ID No. 9993 |
| SERVICES, INC. |) | |
| |) | |
| Permittee of FM Station KAJR, |) | |
| Firebaugh, California |) | |
| |) | |
| H.L. CHARLES D/B/A FORD CITY |) | Facility ID No. 22030 |
| BROADCASTING |) | |
| |) | |
| Permittee of FM Station KZPE, |) | |
| Ford City, California |) | |
| |) | |
| LINDA WARE D/B/A LINDSAY |) | Facility ID No. 37725 |
| BROADCASTING |) | |
| |) | |
| Licensee of FM Station KZPO, |) | |
| Lindsay, California |) | |
| |) | |
| In re Application of |) | |
| |) | |
| WESTERN PACIFIC BROADCASTING, INC.) |) | File No. BR-19970804YJ |
| |) | Facility ID No. 71936 |
| For Renewal of License for AM Station KKFO, |) | |
| Coalinga, California) |) | |

TO: The Honorable Arthur I. Steinberg
Administrative Law Judge

**CONSOLIDATED REPLY TO OPPOSITIONS
TO PETITION FOR LEAVE TO INTERVENE**

1. Richard B. Smith hereby replies to the Oppositions filed by the Enforcement Bureau (“Bureau”) and William L. Zawila, Avenal Educational Service, Inc., Central Valley Educational Services, Inc., H.L. Charles d/b/a Ford City Broadcasting, Linda Ware d/b/a Lindsay Broadcasting and Western Pacific Broadcasting, Inc. (collectively, “Zawila”) with respect to Mr. Smith’s Petition for Leave to Intervene herein.¹

2. Both the Bureau and Zawila claim that Mr. Smith should not be permitted to intervene in this proceeding because he has not made the extraordinary showing supposedly required by Section 1.223(b). The problem with that is that Mr. Smith is entitled to intervene herein as a matter of right under Section 1.223(a).

3. *Victor Muscat*, 31 FCC2d 620 (1971), the case upon which both the Bureau and Zawila principally rely, was purely a revocation proceeding – it involved no applications for permits or licenses at all. Intervention in such proceedings is (and was at the time of the *Muscat* decision) governed by Section 1.223(b).

4. But Section 1.223(a), which provides for intervention *as a matter of right*, is applicable to “cases involving applications for construction permits and station licenses, or modifications or renewals thereof”. As is plainly evident from the caption of this proceeding, this is a “case[] involving” an application for renewal of a license (of Station KKFO). To be sure, the single docket includes a variety of matters, including some revocations – but the case here unquestionably “involv[es]” a renewal application. Thus, the intervention-as-of-right provision of Section 1.223(a) is clearly applicable here.

¹ A Motion for Leave to File the instant Reply is being tendered simultaneously herewith.

5 Mr. Smith's interest in this matter is founded on well-established assertions of fraud and misrepresentation to the Commission by Zawila. While Mr. Smith's particular interest happens to arise from the immediate impact on Mr. Smith of Zawila's Station KNGS(FM) fraud, it is clear from the Hearing Designation Order ("*HDO*") herein, FCC 03-158, released July 16, 2003, that Zawila has engaged in a pattern of fraud with respect to *all* the stations listed in the caption, including both Station KNGS(FM) and Station KKFO(FM). *See HDO* at, *e g* , 25, ¶96 (headed "*Misrepresentation/Lack of Candor (KNGS, KAAX, KAJP, KZPE, KZPO, KKFO)*"). The core of this case relates to a course of conduct, a *modus operandi*, *by Zawila* in connection with *all* the captioned stations. So the license renewal application of Station KKFO(FM) is ineluctably "involved" and interconnected with *all* of the stations here, including Station KNGS(FM), and *vice versa*.

6. Thus, the interesting discussions of Section 1.223(b) offered by the Bureau and Zawila are immaterial here, as is their mutual reliance on *Muscat*. Since this is a "case involving", *inter alia*, a license renewal application, and since Mr. Smith has satisfied the criteria set out in Section 1.223(a), he is entitled to intervene as a matter of right.

7. This is especially true in view of the fact that Mr. Smith was among the first, if not the first, to bring Zawila's egregious misconduct to the Commission's attention. *See, e.g., HDO* at 3, ¶9-10. As is obvious from the *HDO*, Mr. Smith's allegations were right on the mark, leading directly to the designation of this hearing. The Commission has indicated that when basic qualifying issues are specified against a party as a result of the allegations of an objector (such as Mr. Smith), the objector "would, *of course*, be entitled to status as a party to th[e] proceeding." *GAF Broadcasting Company, Inc* , FCC 93-385, released August 16, 1993

(emphasis added). Here, too, it is clear that Mr. Smith should “of course” be entitled to intervene.

8. The only “hybrid” revocation/application proceeding which undersigned counsel have been able to locate in the Commission’s records is *Algreg Cellular Engineering*, CC Docket No. 91-142. In that case, multiple applicants for various, non-mutually exclusive cellular authorizations were alleged to have entered into mutual risk sharing agreements in violation of then-applicable rules governing cellular lottery participation. The alleged wrong-doing applicants were not themselves necessarily related to one another in any way, but since all were accused of entering into the same improper agreement (which had apparently been produced and promoted by the organization which prepared the applications for each of the applicants), all were designated for a common hearing. Since, by the time of designation, some of the applications had been granted and authorizations issued, those applicants were technically subject to revocation in the same proceeding. Hence, the proceeding involved both applications and revocations.

9. In *Algreg*, each applicant/licensee was a separate and distinct entity, with separate principals and a separate story to tell. While the company which prepared the applications was central to all the allegations, it was not one of the captioned parties. That company was at the hub of the wheel, and each of the captioned applicants was on the rim of the wheel, connected only to the hub and not to any of the other applicants. Under these unusual – probably unique – circumstances, the Review Board was careful to limit intervenors to matters as to which they had a particular interest. See *Algreg Cellular Engineering*, 6 FCC Rcd 5299 (Rev. Bd. 1991).

10. But here, Zawila is the hub of *all* the alleged misconduct. While multiple stations may be listed in the caption, in fact all of those stations were apparently owned or controlled by

Zawila, and the misconduct at each of the stations is ultimately attributable to Zawila. That being the case, an entity having an interest in any of the stations has an interest in the totality of this proceeding, since the resolution of this case will rest, ultimately, on the determination of one question – *i.e.*, whether or not Zawila is basically qualified to be a Commission licensee.

11. Since the analyses served up by the Bureau and Zawila are based on a fundamental misstatement of the basis of Mr. Smith's claim for intervention, those analyses naturally involve considerable rhetoric which is simply meaningless in the context of a claim of intervention by right under Section 1.223(a). Mr. Smith notes for the record, though, that even if Section 1.223(b) were deemed, *arguendo*, to apply to him, he would still be entitled to intervene here.

12. The Bureau asserts that Mr. Smith has not shown that substantial issues of fact or law will not be adequately raised or argued without his participation, or that Mr. Smith will help in the resolution of this proceeding. The Bureau also suggests that Mr. Smith's participation is likely to delay the outcome here. Bureau Opposition at 3. Zawila argues in the same vein. Zawila Opposition at 4-5.

13. As to the adequacy of the Bureau's handling of issues of fact and law, Mr. Smith notes the following: At the prehearing conference, Bureau counsel indicated an intent to determine whether the license of Station KKFO may have automatically expired as a matter of law. He did not, however, suggest that any similar effort might be made with respect to Station KNGS. But the construction permit of Station KNGS(FM) specified that that permit would expire by a date certain if the facilities specified in that permit were not built and a covering license application were not filed by that date. As is clear from the *HDO*, the facilities specified in the KNGS permit were *never* built and, while Zawila did file something with the

Commission, the wholly fraudulent “application” he tendered cannot legitimately be deemed a “license application” sufficient to toll the expiration of the permit. *Cf Idaho Broadcasting Consortium*, 16 FCC Rcd 21558 (Mass Media Bureau 2001). In other words, because of Zawila’s failure to comply with the construction requirement, the KNGS permit has expired by its own terms, and nothing remains to be done except to have the last traces of that permit expunged from the Commission’s records, much as the Bureau appears to be intending to do with respect to KKFO.

14. While the Bureau may not be inclined to address that issue with respect to KNGS, Mr. Smith certainly intends to do so. And in view of Mr. Smith’s obvious interest in this matter², Mr. Smith intends to address that issue vigorously.

15. As far as any assertion of potential “delay” is concerned, suffice it to point out that Mr. Smith first raised questions about Zawila in 1996, *see HDO* at 3, n.3, and he provided extensive allegations in 1999. As described in the *HDO*, he provided the Commission substantial detail in support of his allegations, including photographs. And yet it took the Commission *four years* to commence this proceeding. During that time Mr. Smith sought repeatedly to expedite the staff’s consideration of his complaint, and yet it still took the length of a college education for the staff to produce the *HDO*. With all due respect, the Presiding Judge need not be concerned about delay arising from Mr. Smith here.

² Zawila attempts to pooh-pooh the nature of Mr. Smith’s interest here, suggesting that it is remote or speculative. Zawila Opposition at 3-4. But it has been well-documented in Mr. Smith’s multiple filings with the FCC – and Zawila does not attempt to deny – that the Class B construction permit supposedly held by Zawila for KNGS is preventing Mr. Smith from improving the facilities of his own station. Of course the elimination of the KNGS permit cannot automatically improve Mr. Smith’s facilities – but that elimination is an essential preliminary step in Mr. Smith’s upgrade effort. The fact that KNGS presents any impediment at all is especially aggravating in view of the fraud and misrepresentation through which the Class B permit was obtained. As a result of that fraud and misrepresentation, for the better part of a decade Mr. Smith has been prevented from filing to improve his facilities, and the listeners in the Coalinga/Orange Grove, California area have been deprived of service from both Mr. Smith’s improved facilities and the Coalinga channel which Zawila has held hostage.

WHEREFORE, for the reasons stated, Richard B. Smith renews his petition for leave to intervene in this proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'VJC', is written over a horizontal line.

Vincent J. Curtis, Jr., Esq.

Harry F. Cole, Esq.

Susan A. Marshall, Esq.

Counsel for Richard B. Smith

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September 11, 2003

CERTIFICATE OF SERVICE

I, Suzanne Thompson, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a copy of the foregoing "Consolidated Reply To Oppositions To Petition For Leave To Intervene" was sent this 11th day of September, 2003, by first-class United States Mail, postage prepaid to:

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The Honorable Arthur I. Steinberg (by hand and fax)
Administrative Law Judge
Federal Communications Commission
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Suzanne Thompson